



ILLINOIS COMMERCE COMMISSION

September 5, 2002

Village of Elwood, Will County, Illinois,
Petitioner

Vs.

CenterPoint Intermodal LLC, Burlington Northern and Santa Fe Railway
Company and State of Illinois Department of Transportation,
Respondents

T02-0038

Petition for an Order of the Illinois Commerce Commission authorizing the establishment of four new grade crossings along the Industrial Park Lead track and an associated wye connection track owned by CenterPoint Intermodal LLC, at Baseline Road, Center Industrial Park Drive, Park Road, and East Access Road (a/k/a/ Strawn Road) in the Village of Elwood, Will County, Illinois, directing interim grade crossing protections and subsequent installation of automatic protection devices at certain of the crossings, the construction of the crossings proper, and dividing the cost among the parties.

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

Entered:

Jane B. Tate

Jane B. Tate
Administrative Law Judge
Review & Examination Program

JBT:rsc

Railroad Staff: Mr. Humphries

DOCKETED

STATE OF ILLINOIS

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Railway Company and State of Illinois Department of
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PROPOSED ORDER

By the Commission:

On April 22, 2002, the Village of Elwood, Will County, Illinois ("Petitioner" or "Village") filed the above-captioned petition with the Illinois Commerce Commission ("Commission") naming as Respondents CenterPoint Intermodal LLC ("CenterPoint"), Burlington Northern and Santa Fe Railway Company ("the Railway" or "BNSF"), and State of Illinois, Department of Transportation ("IDOT").

Pursuant to notice, this matter came on for hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at the offices of the Commission in Chicago, Illinois, on June 20, 2002. Appearances were entered by counsel for the Railroad and the Village. An appearance was also entered by Henry C. Humphries, Railroad Safety Specialist, Transportation Division of the Commission. Post-hearing briefs were filed by the parties. The ALJ reopened the matter for further discussion of appropriate warning devices and an additional hearing was held on August 22, 2002. At the conclusion of the hearing, the record was marked "Heard and Taken."

Testimony was presented by Neil Doyle of CenterPoint Properties, a subsidiary of CenterPoint Intermodal LLC; Rodney Tonelli, Director of Planning

at Whitaker-Tonelli; and Martin Ross, a civil engineer with TransSystem Corporation.

Respondent CenterPoint proposes to construct a single industrial park lead track ("IPL") beginning at a rail yard operated by BNSF and continuing eastward within the CenterPoint Intermodal Center at Deer Run Industrial Park. Approximately 3.5 miles of track will be constructed during 2002. The track will intersect Baseline Road in the industrial park and Petitioner proposes a public at-grade crossing at the intersection.

For the next twelve to twenty-four months, vehicular traffic will be a small fraction of the 8,500 average daily traffic ("ADT") expected when the development has been completed (build-out). Trains will utilize the crossing twice daily or less, traveling at less than twenty miles per hour. Primarily, operations will consist of switching.

The southbound portion of Baseline Road consists of two lanes plus a left turn lane. The appropriate warning device is cantilvered automatic flashing light signals ("AFLS"). The northbound portion of Baseline Road is one lane and should be equipped with standard AFLS. Until the warning devices are operative, the Railway should provide for hand flagging. At build-out or when train and vehicular traffic have increased, Petitioner should file a supplementary petition to upgrade the warning devices.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Village of Elwood, Will County, Illinois is a political subdivision of the State of Illinois;
- (2) Burlington Northern and Santa Fe Railway Company, a Delaware corporation, is a corporation engaged in the transportation of property and/or passengers for-hire in the State of Illinois and as such, is a "rail carrier" within the meaning of Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (3) the Commission has jurisdiction of the subject matter and the parties herein;
- (4) matters contained in the prefatory portion of this order are adopted as findings of fact;
- (5) Petitioner proposes to construct a public roadway, namely Baseline Road, which will cross the track of the Railway; Baseline Road, a north/south roadway, will provide access to local and state traffic

within the CenterPoint Intermodal Center at Deer Run Industrial Park;

- (6) the estimated cost of \$20,000 will include installation of precast concrete crossing panels, regulatory warning signage, and pavement markings for the proposed crossing; costs will be the equal responsibility of the Village of Elwood and CenterPoint Intermodal LLC;
- (7) the construction of the Baseline Road crossing is necessary for the safety and convenience of the statewide traveling public;
- (8) the northbound portion of the Baseline Road crossing should be equipped with cantilevered automatic flashing light signals; the southbound portion of the Baseline Road crossing should be equipped with standard automatic flashing light signals; the crossing should be equipped with motion sensory circuitry;
- (9) until the warning devices are operative, the Burlington Northern and Santa Fe Railway Company shall provide hand-flagging for any and all of its trains at the crossing;
- (10) all costs of future maintenance and operation of the warning devices at the crossing of Baseline Road and the Railway's tracks and all costs of future maintenance of the crossing surface shall be borne by the Railway; all costs of future maintenance of the Baseline Road approaches to the crossing shall be borne by the Village;
- (11) the parties are required and directed to proceed immediately in performing the work herein required of each of them and shall complete the work within one (1) year of the date of this Order;
- (12) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the petition of the Village of Elwood, Will County, Illinois be, and the same is

hereby granted for the construction of a public at-grade crossing of the tracks of the Burlington Northern and Santa Fe Railway Company at Baseline Road, in the Village of Elwood, Will County, Illinois.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company be, and it is hereby required and directed to install and thereafter maintain and operate motion sensory circuitry, standard automatic flashing light signals at the northbound portion of the crossing, and cantilevered automatic flashing light signals at the southbound portion of the crossing and install and thereafter maintain a precast concrete crossing surface. The cost for the installation of the warning devices and crossing surface shall be borne equally by the Village of Elwood and CenterPoint Intermodal LLC.

IT IS FURTHER ORDERED that until the warning devices at the subject crossing are operative, Burlington Northern and Santa Fe Railway Company shall provide hand-flagging for the crossing of any and all of its trains.

IT IS FURTHER ORDERED that the installation and future maintenance of roadway approaches are the responsibility of the Village of Elwood.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company and the Village of Elwood be, and they are hereby required and directed to complete the aforementioned work within one (1) year from the date of this Order.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company shall within sixty (60) days from the date of this Order, submit two (2) copies of the detailed cost estimates and two (2) copies of the general layout plans applying to the installation of the warning devices to the staff of the Rail Safety Section of the Commission for its approval.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company shall file a Form 3 of 92 Illinois Administrative Code ("I.A.C.") 1535 of this Commission showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company and the Village of Elwood, within six months from the date of this Order, shall each submit a written report to the Director of Processing and Information, Transportation Division of the Commission, stating the progress each has made toward the accomplishment of their work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (the name, title, mailing address, telephone number, and facsimile number of the

employee responsible for management of the project.). If the project is behind schedule, the report must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of its work herein required, National Inventory Update Report Forms, as notice of said completions.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company and the Village of Elwood, within six months from the date of this Order, shall each submit a written report to the Director of Processing and Information, Transportation Division of the Commission, stating the progress each has made toward the accomplishment of their work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, crossing information (inventory number and railroad milepost), type of improvement, and project manager information (the name, title, mailing address, telephone number, and facsimile number of the employee responsible for management of the project.). If the project is behind schedule, the report must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing and Information, Transportation Division of the Commission, within five (5) days of the completion of its work herein required, National Inventory Update Report Forms, as notice of said completions.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety

Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction of this matter for purposes of entering such further order or orders as it may deem necessary.

By Order of the Commission this day of 2002.

Chairman